IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8136 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI SURESHBHAI BALABHAI PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.A.J.Desai, learned A.G.P.for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. This Special Civil Application is directed against the detention order dt.19.7.99 passed by the District Magistrate, Bhavnagar whereby the petitioner was detained under S.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985. By yet another order

dt.19.7.99 the petitioner was committed to District Jail, Surat. The grounds of detention enclosed with the detention order show that the petitioner has been found to be a dangerous person within the meaning of S.2(c) of the Act. As per the detention order, three criminal cases for offences under Chapters 16 and 17 I.P.C. were registered against the petitioner at Police Station, 'A' Division,Bhavnagar being Criminal Case No.54/97 dt.3.2.97, Criminal Case No.47/99 dt. 21.1.99 and Criminal Case No.267/99 dt.21.5.99 respectively. It has been recorded in the detention order that despite being released on bail in the aforesaid criminal cases, the petitioner was continuing with his anti social activities. The detaining authority has then given the details of the statements made by 3 witnesses dt.6.7.99, 5.7.99, and 5.7.99 with regard to the incidents dated 25.6.99, 29.6.99 and 2.7.99 respectively. These 3 witnesses have deposed against the anti social activities of the petitioner. The detaining authority says that he had verified the correctness of the statements made by the witnesses and after careful study he has felt satisfied that the petitioner was a dangerous person and his anti social activities were prejudicial to the public order. It has been further stated that the witnesses had sought protection that their identity may not be disclosed as they were afraid of the petitioner and the detaining authority has, therefore,invoked the provisions of S.9(2) of the Act. It has been recorded that the petitioner alongwith his associates was creating terror and nobody could file complaint against the petitioner because of his fear and the petitioner through his anti social activities was beating innocent persons resulting into a helter skelter and was committing breach of the public order. The steps taken against him under S.110 of Cr.P.C. on 25.2.97 did not yield any result and it was therefore very clear that the petitioner's anti social activities were going on continuously and the proceedings under S.59 of the Bombay Police Act with regard to externment will take a long time and, therefore, it was necessary to detain him as a dangerous person under S.2(c) of the Act in exercise of the powers under S.3(2) of the Act. Accordingly the detention order was passed.

2. It is given out by the learned counsel for the petitioner that during the pendency of this case, the petitioner has been transferred to Sabarmati Central Jail at Ahmedabad from District Jail,Surat. It is also given out that the petitioner had submitted representation through his lawyer on 9.9.99 against the detention, as aforesaid. One representation was addressed to the District Magistrate, Bhavnagar and the other was

addressed to the Chief Minister.

3. Present petition was filed in this court on 14.10.99. Rule was issued on 15.10.99 and affidavit in reply dt.3.2.2000 has been filed under the signatures of the Deputy Secretary to the Government of Gujarat, Law and Order, Home Department.

4. Learned counsel for the petitioner has submitted that although there are several grounds on which the detention order can be quashed, but according to her detention order deserves to be set aside only on the short ground that the translation of the copy of the bail order, which was enclosed with the grounds of detention at pages 13 to 19 and the translation of the conditions of bail found at page 22 from English to Gujarati was not supplied to him, while Gujarati is the language which the petitioner knows and understands. It has been submitted that both these documents were vital and the non supply of the translation thereof in the language which the petitioner knows and understands is fatal to the detention and on this account his right of making effective representation under Article 22(5) of the Constitution has been seriously affected.

5. Learned A.G.P. has submitted that in the representation dt.9.9.99, which was sent by the petitioner's advocate to the Chief Minister, no demand had been made with regard to the translation of these documents in Gujarati and in fact this representation dt.9.9.99, which was addressed to the Chief Minister, was sent/submitted by the petitioner's advocate to the District Magistrate, Bhavnagar, who received the same on 10.9.99 and the representation, which was addressed to the District Magistrate,Bhavnagar on 9.9.99 was sent/submitted to the Chief Minister on 10.9.99 wherein the grievance was with regard to the translation of the pages 13,16, 17,19 and 22. It has also been stated in the affidavit in reply dt.3.2.2000 that since the order of detention had been passed on 19.7.99 and the representation was received on 10.9.99 after the prescribed period, the same was sent to the State Government on 27.9.99 for consideration. It has also been submitted in the reply that the documents, about which the grievance has been raised, are relating to the orders of his release on bail and since detenu was released on bail by these orders it was but natural that the detenu is able to understand the contents thereof and, therefore, the contention raised by the detenu was not tenable at law.

6. Besides the learned counsel Ms.Kachhavah for the petitioner, Mr.Anil S.Dave and Mr.R.S.Sanjanwala also addressed the arguments. It was submitted that the copy of bail order is a vital document. It is included in the index of the documents enclosed with the grounds of detention, it also finds place in the grounds of detention when the detaining authority says that despite being released on bail the petitioner's anti social activities were continuing. It has been further submitted that in such cases, whether any prejudice is caused or not, is immaterial and even the question of making proper demand of the translated document is also not relevant and the principles which apply with regard to the non supply of vital documents equally apply to the cases in which the translation of such documents in the language which the detenu knows and understands is not supplied.

7. The decision of Powanammal v. State of Tamil Nadu, reported in AIR 1999 SC 618 was cited before this Court. In this case, the Supreme Court has clearly observed that a distinction has through-out been maintained by the Supreme Court between the documents which are relied upon by the detaining authority in the grounds of detention and a document which found mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenue need not show that any prejudice is caused to him, because non supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenue's complaint of non supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenue, should the document be in a different language. In this decision rendered by a three Judges Bench of the Supreme Court, the principle, as narrated hereinabove, has been laid down and the non supply of the translation of a document in the language known to and understood by the detenue in case the document is in a different language has been treated at par with the documents, supply of which was essential and further that barring the cases, wherein only a reference is made to a document in the grounds of detention, the cases in which the

documents were relied upon in the grounds of detention, it is not necessary to show any prejudice because such non supply of such a document itself is fatal.

8. In the facts of the present case, there is no dispute that the language known to and understood by the petitioner is Gujarati and he does not know English. It is an admitted position that the translation of the documents at pages 13 to 19 and 22 in Gujarati was not supplied to the petitioner either alongwith the grounds of detention or even thereafter. In view of the law, as has been laid down by the Supreme Court in the case of Powanammal v. State of Tamil Nadu (Supra) it has, therefore, become necessary for this court to consider as to whether non supply of the copy of the bail order from pages 13 to 19 and the conditions of bail at page 22 and translation to Gujarati from English, should vitiate the order. The fact that the petitioner had been bailed out was evidenced before the detaining authority on the basis of the bail order. In the grounds of detention, it has been mentioned by the detaining authority that despite the grant of bail in the criminal cases, the petitioner was continuing with his anti social activities. In the Index of documents enclosed with the grounds of detention, the documents at pages 13 to 19 and 22 have been included as a part of the documents relied upon, as would appear from the Index available at page 21 of the paper book of this petition. It has, therefore, become necessary for this court to examine the effect of the non supply of the translation of these documents in Gujarati to the petitioner.

9. In the case of Abdul Sathar Ibrahim Manik v. Union of India, reported in AIR 1991 SC 2261, a question was considered with regard to the non supply of the bail application and an order refusing bail. Ofcourse in the facts of the case before the Supreme Court, the detenue's bail application had in fact been rejected but this fact was not brought to the notice of the detaining authority and the detaining authority had proceeded on the basis that the petitioner was in judicial custody and possibility of his release on bail in the near future cannot be ruled out. That was a case under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and it was observed that what would be the compelling reasons in the context would depend upon the facts of each case. While referring to the case of Mst. L.M.S. Ummu Saleema v. B.B. Gujaral, reported in AIR 1981 SC 1191, following observations were quoted:-

" It is, therefore, clear that every failure to

furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the fundamental rights guaranteed by Article 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention."

10. In later part of this judgment, the case of Kamarunnissa v. Union of India, reported in AIR 1991 SC 1640,has been discussed. In the case of Kamarunnissa (Supra) the Supreme Court has laid down certain conclusions having regard to the various decisions on the point often raised in this type of matters. Conclusion No.6 arrived at in the case of Kamarunnissa (Supra) is relevant for the purpose of the present case and the same is reproduced as under:-

"In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

11. In M.Ahmedkutty v. Union of India, reported in (1990) 2 SCC 1, the contention was specifically considered that the bail application and the order granting bail, which were relied upon by the detaining authority, were not supplied to the detenu and, therefore, the detention was illegal. It was noticed that in the grounds it was clearly mentioned that the detenu was remanded to judicial custody and was subsequently released on bail. Therefore these documents were in fact placed before the detaining authority and were relied upon by him and, therefore, non supply of these relevant documents to the detenu disabled him to make an effective representation. Therefore, there was violation of Article 22(5) of the Constitution. In this very decision it was observed that all the documents relied upon by the detaining authority must be pari passu supplied to the detenu.

12. Thus the correct legal position, which emerges from the aforesaid decisions, is as under:-

(i) Failure to furnish the copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention.

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenu need not to show that any prejudice is caused to him. Non supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order.

(iii) When the detenu was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail as that would be a vital ground for ordering the detention and in such cases the copies should also be supplied to the detenu.

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

13. Such being the position of law on the basis of the Supreme Court decisions, as aforesaid, this Court finds that in the facts of the present case non supply of the translation of the bail order and the conditions of bail at pages Nos.13 to 19 and 22 i.e. non supply of the documents, which were vital to the grounds of detention, has affected the petitioner's right under Article 22(5) of the Constitution of India. This Special Civil Application, therefore, deserves to be allowed on this ground alone and, therefore, it is not necessary for me to consider the other grounds on which the detention order has been sought to be assailed.

14. In the result, the impugned detention order

dt.19.7.99 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside. It is directed that the petitioner detained in Sabarmati Central Jail, Ahmedabad be released forthwith if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)